TAN CHEE KERN

v.

PP

COURT OF APPEAL, KUALA LUMPUR
ALAUDDIN MOHD SHERIFF JCA
ABDUL AZIZ MOHAMAD JCA
NIK HASHIM JCA
[CRIMINAL APPEAL NO: B-05-42-01]
24 MARCH 2004

CRIMINAL PROCEDURE: *Sentence - Imprisonment for life - Whether means imprisonment for 20 years - Definition of 'imprisonment for life' in s. 2 Firearms (Increased Penalties) Act 1971 - Specifically excludes operation of s. 3 Criminal Justice Act 1953 - Whether sentence of 'imprisonment for life' for conviction under s. 4 Firearms (Increased Penalties) Act 1971 means imprisonment for whole natural life - Whether appellate court can substitute with imprisonment for 20 years*

WORDS & PHRASES: *"imprisonment for life" - Definition of - Firearms (Increased Penalties) Act 1971, ss. 2, 4 - Whether means imprisonment for whole natural life - Whether means imprisonment for 20 years - Whether definition in s. 2 Firearms (Increased Penalties) Act 1971 excludes and prevails over s. 3 Criminal Justice Act 1953*

The appellant/defendant was convicted in the High Court on an amended charge under s. 4 of the Firearms (Increased Penalties) Act 1971 ('the FIPA') and was sentenced to imprisonment for life with six strokes of whipping. In appealing against the sentence imposed, the defendant beseeched the justices of appeal to impose a sentence of 20 years' imprisonment in place of life-imprisonment. It was submitted that a sentence of 'imprisonment for life' is deemed for all purposes to be a sentence of imprisonment for twenty years – regard being had to s. 3 of the Criminal Justice Act 1953.

Held (dismissing the appeal)
Per Nik Hashim JCA delivering the judgment of the court:

[1] Section 2 of the FIPA specifically and clearly defines "imprisonment for life" as 'imprisonment for the duration of the natural life of the person sentenced notwithstanding s. 3 of the Criminal Justice Act 1953 and any other written law to the contrary'. Consequently, a sentence of

'imprisonment for life' imposed under s. 4 of the FIPA must mean imprisonment for the duration of the whole life of the convict and **not** imprisonment for 20 years. (pp 484 h & 485 a-b)

[Judgment of High Court affirmed.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Perayu/defendan telah disabitkan di Mahkamah Tinggi atas pertuduhan terpinda di bawah s. 4 Akta Senjatapi (Hukuman Lebih Berat) 1971 ('ASHLB') dan telah dijatuhkan hukuman penjara seumur hidup serta enam sebatan. Dalam rayuan terhadap hukuman yang dijatuhkan, defendan memohon yang arif hakim-hakim rayuan supaya mengenakan hukuman 20 tahun penjara sebagai ganti penjara seumur hidup. Telah dihujahkan bahawa suatu hukuman 'penjara seumur hidup' untuk semua maksud adalah dianggap hukuman penjara 20 tahun – dengan mempertimbang s. 3 Akta Keadilan Jenayah 1953.

Diputuskan (menolak rayuan)
Oleh Nik Hashim HMR menyampaikan penghakiman mahkamah:

[1] Seksyen 2 ASHLB secara jelas dan spesifik telah mentakrif "penjara seumur hidup" sebagai 'penjara selama tempoh hayat orang yang dijatuhkan hukum itu walau apapun peruntukan s. 3 Akta Keadilan Jenayah 1953 dan mana-mana undang-undang bertulis yang lain'. Oleh itu, satu hukuman 'penjara seumur hidup' yang dibuat di bawah s. 4 ASHLB mestilah bermakna penjara bagi tempoh hayat pesalah dan bukan penjara 20 tahun.

Keputusan Mahkamah Tinggi disahkan.]

Legislation referred to:
Arms Act 1960, s. 2
Criminal Justice Act 1953, s. 3
Firearms (Increased Penalties) Act 1971, ss. 2, 3, 4

Appellant in person
For the PP - Roslan Mat Nor, DPP

Reported by Gan Peng Chiang

JUDGMENT

Nik Hashim JCA:

The appellant was originally charged for discharging a firearm with intent to cause death or harm, an offence punishable under s. 3 of the Firearms (Increased Penalties) Act 1971 ('the Act'). The only penalty prescribed by the Act is death. However, at the close of the prosecution case, the learned trial judge amended the charge to one of exhibiting a firearm in the commission of a scheduled offence of robbery under s. 4, an offence punishable with imprisonment for life and whipping with not less than six strokes, and called upon the appellant to enter his defence. The appellant elected to give an unsworn statement from the dock and in the defence, he said that on the day in question he went to a scrap iron shop to ask for money from an Indian man. He had a quarrel with him. Before that, he had swallowed some pills. As a result, he could not recollect what had happened.

However, he admitted he had a pistol but he could not remember discharging it. He also said that he was beaten by the people until he fell unconscious. At the conclusion of the trial, the learned judge ruled that the defence had failed to create a reasonable doubt in the prosecution case and thus found the appellant guilty under the amended charge. The appellant was accordingly convicted and sentenced to imprisonment for life and six strokes of the rotan.

The appellant appealed against the sentence only and urged the court to impose a sentence of twenty years imprisonment instead of imprisonment for natural life. We heard the appeal on 26 January 2004. We dismissed his appeal and affirmed the sentence imposed by the High Court.

The punishment under s. 4 of the Act is imprisonment for life and whipping with not less than six strokes. The imposition of six strokes is the minimum prescribed by the Act and that was the sentence meted out by the High Court. In the circumstances, we shall deal only with whether the imprisonment for life imposed by the High Court could be substituted with twenty years imprisonment. It is noted that under s. 3 of the Criminal Justice Act 1953 (Act 345) (the CJA), "imprisonment for life" means an imprisonment for twenty years.

But, under s. 2 of the Act "imprisonment for life" means, notwithstanding s. 3 of the CJA and any other written law to the contrary, imprisonment for the duration of the natural life of the person sentenced. A similar definition of "imprisonment for life" is provided under s. 2 of the Arms Act 1960.

The definition of "imprisonment for life" in s. 2 of the Act is manifestly clear in its terms. Therefore, in respect of the offence of which the appellant was convicted, the sentence of "imprisonment for life" under s. 4 of the Act means imprisonment for the duration of the whole life of the appellant. Thus, we were unable to entertain the appellant's plea to convert the "imprisonment for life" to that of imprisonment for twenty years. Indeed, the appellant's plea is a matter for the Pardons Board.

Accordingly, we dismissed the appeal and affirmed the sentence of the High Court.